

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GARY BRUCE RIGGS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. CR20-052-RSL

ORDER DENYING MOTION  
TO BE CONSIDERED A  
CAREER OFFENDER

This matter comes before the Court on defendant Gary Bruce Riggs' *pro se* "Motion to be Considered a Career Offender" (Dkt. # 15). Having considered the motion and the remainder of the record, the Court finds as follows:

On July 13, 2018, defendant pleaded guilty to mailing threatening communications, in violation of 18 U.S.C. § 876(c). Dkt. # 2 at 6-13. On September 4, 2018, the U.S. District Court for the Eastern District of California sentenced defendant to 30 months of imprisonment and 36 months of supervised release. *Id.* at 14-20. Defendant's initial term of supervised release commenced on March 27, 2020. Dkt. # 1. This Court accepted jurisdiction over defendant on April 7, 2020. *Id.*

On October 29, 2020, the Court found that defendant had violated the conditions of his supervised release by committing the crime of assault with a dangerous weapon. Dkt. # 14 at 1. The Court revoked defendant's term of supervision and sentenced him to 24 months of imprisonment, to be served consecutively to all other terms, including Case Nos. CR20-123-

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1 RSL and CR16-048-RSL.<sup>1</sup> *Id.* at 2. Defendant is currently a prisoner in the custody of the  
 2 Federal Bureau of Prisons at Thomson United States Penitentiary, and his projected release date  
 3 is June 19, 2032. *See* Federal Bureau of Prisons, Find an Inmate,  
 4 <https://www.bop.gov/inmateloc/> (last visited June 21, 2022).

5 Defendant moves the Court to classify him as a career offender and sentence him to life  
 6 in federal prison. Defendant argues that he has “no respect for the law and for human life,” and  
 7 states that he “will continue acts of violence until [he] get[s] life in the federal system.” Dkt.  
 8 # 15 at 2.

9 As a threshold matter, the Court notes that defendant filed his motion *pro se* although he  
 10 is represented by counsel, Mr. Gilbert H. Levy. Hybrid representation of this sort is  
 11 impermissible pursuant to the applicable local court rule:

12 When a party is represented by an attorney of record in a case, the party  
 13 cannot appear or act on his or her own behalf in that case, or take any step  
 14 therein, until after the party requests by motion to proceed on his or her  
 15 own behalf, certifies in the motion that he or she has provided copies of the  
 16 motion to his or her current counsel and to the opposing party, and is  
 17 granted an order of substitution by the court terminating the party’s  
 18 attorney as counsel and substituting the party in to proceed *pro se*;  
 provided, that the court may in its discretion hear a party in open court,  
 notwithstanding the fact that he or she is represented by an attorney.

19  
 20 <sup>1</sup> In CR20-123-RSL, on September 28, 2020, defendant pleaded guilty to assault with a  
 21 dangerous weapon, in violation of 18 U.S.C. §§ 113(a)(3) and 7. CR20-123-RSL, Dkt. # 30. On  
 22 October 29, 2020, the Court sentenced defendant to 120 months of imprisonment, to be served  
 23 consecutively to all other terms, including the above-captioned matter and CR16-048-RSL, and three  
 years of supervised release. *Id.*, Dkt. # 41. Defendant’s conviction in CR20-123-RSL is the basis for  
 the supervised release violation in the above-captioned matter.

24 In CR16-048-RSL, on March 22, 2016, defendant pleaded guilty to escape from custody, in  
 25 violation of 18 U.S.C. §§ 751 and 2. CR16-048-RSL, Dkt. # 15. On July 21, 2016, the Court sentenced  
 26 defendant to 24 months of imprisonment and three years of supervised release. *Id.*, Dkt. # 39. On  
 27 October 29, 2020, the Court revoked defendant’s term of supervised release and sentenced him to 24  
 28 months of imprisonment, to be served consecutively to all other terms, including the above-captioned  
 matter and CR20-123-RSL. *Id.*, Dkt. # 76. Defendant’s supervised release violations included  
 committing the crime of assault with a dangerous weapon, in reference to defendant’s conviction in  
 CR20-123-RSL, and failing to reside in and satisfactorily participate in a residential reentry center. *Id.*

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1 Local Rules W.D. Wash. LCR 83.2(b)(5); *see also* Local Rules W.D. Wash. CrR 1(a)  
2 (indicating that LCR 83.2(b) applies to criminal matters). The Court puts defendant on notice  
3 that if he files further *pro se* motions while represented by counsel, the Court reserves the right  
4 to strike them from the docket without consideration of the merits.  
5

6 Addressing defendant's current motion, the Court lacks the power to grant defendant the  
7 relief he seeks. In essence, defendant is asking the Court to resentence him with a sentencing  
8 enhancement under U.S.S.G. § 4B1.1 for being a "career offender," and to impose a sentence of  
9 life imprisonment.

10 First, in the absence of a statutory exception, terms of imprisonment may not be modified  
11 once imposed. See 18 U.S.C. § 3582(b)-(c). Defendant points to no such applicable statutory  
12 exception. The Court is therefore unable to modify his term of imprisonment.

13 Second, even if the Court had the power to modify defendant's term of imprisonment, it  
14 could not increase it here because it already gave him the maximum term of imprisonment in all  
15 three matters: CR20-052-RSL, CR20-123-RSL, and CR16-048-RSL. In both CR20-052-RSL  
16 and CR16-048-RSL, the Court revoked supervised release and imposed consecutive terms of  
17 imprisonment of 24 months. 18 U.S.C. § 3583(e)(3) governs the maximum term of  
18 imprisonment that the district court may impose when it revokes a defendant's supervised  
19 release. United States v. Knight, 580 F.3d 933, 936 (9th Cir. 2009). It states: "[A] defendant  
20 whose term is revoked under this paragraph may not be required to serve on any such revocation  
21 . . . more than 2 years in prison if such offense is a class C or D felony[.]" 18 U.S.C.

22 § 3583(e)(3). Defendant's original convictions in CR20-052-RSL and CR16-048-RSL for  
23 mailing threatening communications and escape from custody, respectively, are class C and  
24 class D felonies, respectively. See Dkt. # 1; see also 18 U.S.C. §§ 3559(a)(3), 876(c), 751. The  
25 Court was therefore constrained to the 24 months of imprisonment imposed in both matters.  
26 Regarding defendant's conviction for assault with a dangerous weapon, the statute provides that  
27 the maximum sentence is ten years of imprisonment. See 18 U.S.C. §§ 113(a)(3). The Court  
28 sentenced defendant to 120 months, which is equal to the statutory maximum sentence of ten

1 years. Notably, this was an upward variance from defendant's guideline range of 77 to 96  
2 months, which was based on a total offense level of 22 and a criminal history category of V.  
3 See CR20-123-RSL, Dkt. # 36. Had the Court increased defendant's offense level based on his  
4 status as a career offender, this would have only increased his total offense level to 24. See  
5 U.S.S.G. § 4B1.1(b)(5). Taken together with his criminal history category of V, this would have  
6 produced a guideline range of 92-115 months, see U.S.S.G. § 5A, which is still less than the 120  
7 months that the Court imposed.

8 In sum, the Court cannot grant defendant's request. Nonetheless, the Court is gravely  
9 concerned by defendant's lack of respect for human life, as demonstrated by the fact that it  
10 imposed the maximum available sentences in all three matters. The Court encourages defendant  
11 to seek mental health treatment while in custody.

12 DATED this 21<sup>st</sup> day of June, 2022.

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14 Robert S. Lasnik  
15 United States District Judge  
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